

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15329 of Senator Larry Pressler and Harriet Pressler, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 330.5 and 1201.2) to allow offices on the first and second floors in a CAP/R-4 District at premises 527 2nd Street, N.E., (Square 754, Lot 106).

HEARING DATE: June 27, and July 13, 1990
DECISION DATE: September 5, 1990

ORDER

FINDINGS OF FACT:

1. The subject property is located on the east side of 2nd Street N.E., between E and F Streets, N.E. The address is 527 2nd Street, N.E. and it is zoned CAP/R-4.

2. The subject lot is rectangular in shape and contains a land area of approximately 1,077.75 square feet. The lot is 17.5 feet wide and abuts a 30-foot wide public alley to the rear.

3. The site is improved with a two-story flat which was built in 1890 as a two-story single-family rowhouse.

4. To the north on 2nd Street is a commercial parking lot and a vacant commercial building formerly used as a sightseeing office. To the east, in an alley court behind the building is a group of office buildings known as "Capital Courts". Immediately to the south of the subject property, there are three small residential structures. The remainder of 2nd Street extending two blocks south is zoned commercial. Across 2nd Street to the west, the large Federal Judiciary Office Building is under construction. Railroad yards lie to the northwest and another office building is projected for the area.

5. The subject property has been used as a residence since it was developed in 1890. Most recently, the flat was rented as two separate residential apartments. The two leases expired in July and September of 1990.

6. The applicants are requesting a use variance to convert the rowhouse from a residential to a commercial office use.

7. The applicants maintain that their property is surrounded by commercial uses. They stated that this situation is unique to their property and their three immediate residential neighbors.

They argued that this location creates a practical difficulty in renting in the property to desirable tenants. They maintained that good tenants prefer not to live in a commercial environment or in an area where parking is lacking.

8. The applicants stated that the extraordinary or exceptional condition which is the basis for a use variance need not be inherent in the land but may be based on a subsequent event. (DeAzcarate vs. D.C. Board of Zoning Adjustment, 388 A 2d 1233. The applicants maintain that a "subsequent event" that exacerbates the situation in this case is the construction of the large judiciary building directly opposite the subject property. Where residential tenants previously had an unobstructed view of the beautiful union station and its environs, they will now view the front of a government office building.

9. The applicant pointed out that a large number of residents and owners in the area support their application.

10. The applicants maintained that granting the variance will enhance rather than harm the zone plan. They stated that permitting the proposed commercial use at the site will help to insulate the remaining residential area to the east from the high intensity, multi-story office building under construction on the west side of 2nd Street. This use would create a buffer between the low commercial use and the intense commercial use across the street.

11. Finally, the applicants maintain that the tax office has categorized the subject property as commercial and taxed it as such. The proposed variance will allow the use to conform to how the District of Columbia tax office presently classifies the property.

12. The Office of Planning (OP), by report dated June 20, 1990 and through testimony at the hearing, recommended denial of the application. OP made note of the subject property and its improvements. OP noted that the area surrounding the subject site is characterized by single-family rowhouses, some of which have been converted to commercial uses. OP also made note of the other commercial uses found in the area.

OP pointed out that the subject site is located in a CAP/R-4 District. The CAP (Capitol Interest District Overlay) permits development of uses that are consistent with the U.S. Capitol Master Plan to a maximum floor area ratio of 1.8 and a maximum height of three stories/40 feet. This district is mapped in combination with other districts. The R-4 district permits matter-of-right development of residential uses (including detached, semi-detached and row single-family dwellings and flats) with a minimum lot area of 1,800 square feet, a minimum lot width of 18 feet, a

maximum lot occupancy of 60 percent, and a maximum height limit of three stories/forty feet.

OP also noted the standards for granting a variance. OP stated that the property, which was developed with a two-story rowhouse in 1890, has been used as a residence since that time. Presently, the structure is a flat and it is rented for residential use. OP stated that the present owner is using the property in compliance with the Zoning Regulations and OP is unable to determine why the property could not continue to be used as a flat. OP pointed out that other properties on this block of 2nd Street are presently being used as flats.

OP pointed out that this block contains many commercial office uses however, the remaining structures in this square are predominantly used as single-family dwellings. OP noted that the general intent of the R-4 District, in this instance, is to stabilize the remaining residential character of the area. OP believes that the proposed commercial office use directly contradicts the intent of the R-4 District. OP is therefore of the opinion that granting the variance would impair the intent, purpose and integrity of the zone plan for the city.

13. By letter dated May 15, 1990, the Architect of the Capitol expressed his support for the application. He stated that several properties in the immediate area appear to have similar occupancies to the one proposed. He does not perceive any substantial negative impact on areas under his office's jurisdiction.

14. By letter dated June 22, 1990, the Metropolitan Police Department stated that it is of the opinion that the requested variance will neither adversely affect the public safety in the area nor create an increase in demand for police services. Accordingly, the Police Department has no opposition to the application.

15. By letter dated June 24, 1992, the Stanton Park Neighborhood Association stated that the applicants have failed to demonstrate a hardship that would result if the variance is not granted. The Association further stated that it opposes the conversion of residentially-zoned properties on Capitol Hill to offices or commercial use and that its executive committee also opposes the subject application.

16. The Capitol Hill Restoration Society (CHRS), by letter dated June 18, 1990, expressed its opposition to the application. The (CHRS) was of the view that the applicant has not demonstrated either exceptional practical difficulties or exceptional and undue hardship. (CHRS) believes that to grant the application would constitute "spot zoning".

17. Advisory Neighborhood Commission (ANC) 6A, by report dated June 22, 1990, expressed its support for the variance request. No further comments were provided.

18. The applicants submitted into the record a petition containing 39 signatures of persons from the neighborhood who support their application.

19. The Board finds that the property is physically similar to other residential properties in the area. The Board finds that the circumstances affecting the subject property also affect the three other rowhouses to the south of the subject property.

20. The Board finds that the location of the property near commercial uses does not prevent its use for residential purposes.

21. The Board further finds that to allow office use at the site will erode the housing stock in the square.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record the Board concludes that the applicant is seeking a use variance to allow office in a CAP/R-4 District. Granting such a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity the zone plan. The Board must also find that the property cannot reasonably be used for the purpose for which it was zoned.

The Board concludes that the applicant has not met this burden of proof. The Board concludes that the circumstance of being surrounded by commercial uses is not unique to the subject property. This condition affects each of the rowhouses adjacent to the applicants property.

The Board concludes that while the applicants may be unable to attract a certain type of tenant, the residential zoning does not render the property unusable. The applicant has not demonstrated that the property could not be used for other permitted uses.

The Board concludes further that to allow the office use at the site will contribute to the erosion of residential uses in a district where such uses are to be stabilized. The Board concludes, therefore, that to grant the variance will substantially impair the intent, purpose and integrity of the zone plan.

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The Board has accorded ANC 6A the "great weight" to which it is entitled.

In light of the foregoing, the Board concludes that the application is hereby **DENIED**.

VOTE: 4-0 (John G. Parsons, Carrie L. Thornhill, William F. McIntosh and Charles R. Norris to deny; Paula L. Jewell not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER:

APR 6 1992

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15329Order/bhs

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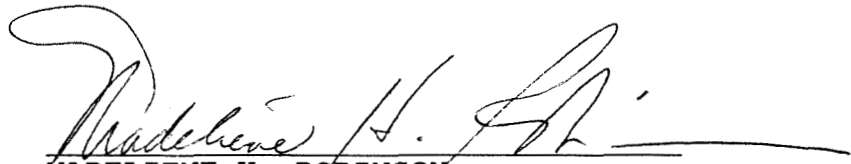
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As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 6 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Senator and Mrs. Larry Pressler
115 4th Street, S.E.
Washington, D.C. 20003

Henry H. Brylawski
316 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Craig Lisk, Chairperson
Advisory Neighborhood Commission 6-A
1341 Maryland Avenue, N.E.
Washington, D.C. 20002


MADELIENE H. ROBINSON
Acting Director

DATE: APR 6 1992

15329Att/bhs